



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 215

Assembly Amendments 1 and 3

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Assembly Bill 215 creates a moratorium on the discharge of dredged or fill material into nonfederal wetlands in Wisconsin. Assembly Bill 215, as amended by Assembly Amendments 1 and 3, is identical to Senate Bill 54, as amended by Assembly Substitute Amendment 1, and Assembly Amendments 1 and 2 to the substitute amendment.

PROHIBITIONS AGAINST DISCHARGES INTO NONFEDERAL WETLANDS

Assembly Bill 215 provides that no person may discharge dredged or fill material into a nonfederal wetland. For purposes of the prohibition, a "nonfederal wetland" is a wetland to which the federal discharge permitting process under 33 U.S.C. s. 1344 [sec. 404 of the Clean Water Act] does not apply due to the *SWANCC* decision of the U.S. Supreme Court, but to which that permitting process did apply on January 8, 2001.*

EXEMPTIONS

Assembly Bill 215 includes four exemptions from the prohibition against discharging dredged or fill material into a nonfederal wetland. (Under *Assembly Amendment 1* to Assembly Bill 215, the prohibition expressly does not apply to a person who discharges dredged or fill material into a nonfederal wetland if any of the exemptions apply.) Assembly Bill 215 contains the following exemptions:

1. The prohibition does not apply if the discharge is authorized by a state or local permit or other approval under specified regulatory programs in state law. Under *Assembly Amendment 1*, this

* The Supreme Court issued its decision in the *SWANCC* case (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 (U.S. Jan. 9, 2001)) on January 9, 2001. Additional information on this decision is available in Legislative Council Legal Memorandum LM-2001-1, *U.S. Supreme Court Case on Wetlands*, January 25, 2001.

exemption is limited to a person who has received notification from the Department of Natural Resources (DNR) that the discharge is authorized by a permit or other approval requirements under specified regulatory programs in state law.

2. The prohibition does not apply if a discharge of dredged or fill material into a nonfederal wetland is not subject to a state or local permit or other approval requirement under specified regulatory programs in state law, and if the discharge would have been exempt on January 8, 2001 from ch. NR 103 water quality standards based on existing exemptions in ch. NR 103. Under ***Assembly Amendment 1***, this exemption is limited to a person who has received notification from the DNR that the discharge is authorized by a permit or other approval requirements under specified regulatory programs in state law, and the discharge would have been exempt on January 8, 2001 from ch. NR 103 water quality standards based on existing exemptions in ch. NR 103.

3. The prohibition does not apply to discharges that are permitted under a U.S. Army Corps of Engineers (ACE) permit issued on or before January 8, 2001 if the discharge is in compliance with the terms of the permit. Under ***Assembly Amendment 1***, this exemption is limited to a person who has received notification from the DNR that the discharge is allowed under an ACE permit issued on or before January 8, 2001 and the discharge is in compliance with the terms of the permit.

4. The prohibition does not apply if the discharge is the result of an activity that would have qualified for an exemption from an ACE discharge permit under 33 U.S.C. s. 1344 (f) [sec. 404 (f) of the Clean Water Act] on January 8, 2001 or specified federal agency interpretations of those exemptions in effect on January 8, 2001. Under ***Assembly Amendment 1***, this exemption is limited to a person who has received notification from the DNR that the discharge is the result of an activity that would have qualified for an exemption from an ACE discharge permit under 33 U.S.C. s. 1344 (f) [sec. 404 (f) of the Clean Water Act] on January 8, 2001 or specified federal agency interpretations of those exemptions in effect on January 8, 2001.

TERMINATION DATE OF PROHIBITION

Assembly Bill 215 establishes that the prohibition on the discharge of dredged or fill material in a nonfederal wetland does not apply on or after July 1, 2001.

Under ***Assembly Amendment 3***, the prohibition described above does not apply beginning on either of the following dates, whichever occurs first:

1. July 1, 2001, or

2. The day after the effective date of legislation that subjects discharges of dredged or fill material into nonfederal wetlands to a certification process that includes provisions that afford protection to nonfederal wetlands that is comparable to, or more protective than, the protection allowed under the federal program in existence the day before the *SWANCC* decision. This federal program is the federal water quality certification processes under secs. 401 (a) and 404 of the Clean Water Act that applied to nonfederal wetlands on January 8, 2001.

ENFORCEMENT

Under *Assembly Amendment 1* to Assembly Bill 215, a person who violates the prohibition against discharging dredged or fill material into a nonfederal wetland under s. 281.163, as created by Assembly Bill 215, is subject to penalties under s. 281.98 (1), Stats., which include a forfeiture of not less than \$10 nor more than \$5,000 for each day that the prohibition is violated.

Also under *Assembly Amendment 1* to Assembly Bill 215, the Department of Justice must enforce the prohibition against the discharge of dredged or fill material into a nonfederal wetland under s. 281.163, as created by Assembly Bill 215, under its enforcement authority contained in s. 299.95, Stats.

Assembly Amendment 1 and Assembly Amendment 3 were adopted by the Assembly on a voice vote on March 20, 2001.

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